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SENSITIVE
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TAGS: [PARM](#) [NATO](#) [MOPS](#) [PREL](#)
SUBJECT: RETRANSMITTAL: DEMARCHE TO NATO AND COALITION
PARTNERS ON CONVENTION ON CLUSTER MUNITIONS

¶1. (U) This is a retransmittal of STATE 125512 to include KOLONIA, KOROR, and MAJURO for INFO. Classified portions have been removed for transmittal to KOROR.

¶2. (SBU) Summary: On December 3, the Convention on Cluster Munitions (CCM) will be opened for signature in Oslo, Norway. The United States will neither sign this Convention nor participate as an observer, although many of our allies and partners will sign this Convention. The Department requests that Posts clarify respective host government positions on this issue, emphasizing the importance of preserving interoperability and consultations with the U.S. before host governments take steps that would impact military cooperation with U.S. military forces. End Summary.

¶3. (SBU) FOR BERLIN, CANBERRA, MADRID, OSLO, OTTAWA, ROME: Please take this cable for information; you will receive demarches septel tailored to specific circumstances regarding your respective host governments.

¶4. (U) FOR LONDON and TOKYO: Please take this cable for information. This issue is already being addressed in bilateral consultations with the UK and Japan. Posts may inform host governments that the U.S. is consulting with other key governments in advance of the December signing.

OBJECTIVES:

¶5. (SBU) FOR ALL REMAINING ADDRESSEES: If NATO Allies and other coalition partners embrace a narrow interpretation of Article 21, there could be consequences upon future NATO operations and coalition contingency plans. Please pursue the following objectives with host nation governments to confirm that interpretation of Article 21 will ensure continued interoperability for combined operations. Post may draw on press guidance in ref tel and background below for these discussions.

-- Confirm whether host government intends to sign the Convention on Cluster Munitions.

-- Communicate that while the United States shares concerns about the potential for unintended harm to civilians, the U.S. is not in a position to sign the CCM at this time because of our defense requirements and far ranging security commitments. However, we are taking technical steps to reduce the potential for unintended harm to civilians from cluster munitions and still hope it will be possible to finalize a protocol in the framework of the Convention on Certain Conventional Weapons (CCW) that would require states to phase in technical improvements to CM over time, minimizing the potential humanitarian impact of their use.

-- Note our appreciation for the inclusion of Article 21 in the CCM text and expectation that this provision will allow our military forces to continue to conduct combined operations. (For NATO Allies: Note that the NATO Military Advice of September 30 confirms that interoperability is

protected.)

-- Request that host government bilaterally convey any concerns about interoperability of our military forces. Encourage them to consult with us before taking any action that would jeopardize military cooperation.

¶6. (SBU) Background: The Oslo Process: On December 3, the CCM will be open for signature in Oslo, Norway. All UN member states are invited to attend the ceremony. Embassy Oslo reports that the Government of Norway has chartered a plane to bring Foreign Ministers and delegations directly from the NATO Ministerial in Brussels on December 3. It is anticipated at least 20 of our 25 NATO Allies and several other key partners will sign the CCM. The United States will not attend or sign. The CCM is widely touted by many of its supporters as a significant advance for international humanitarian law (IHL), although the Convention is more properly treated as a disarmament treaty rather than an IHL instrument. Others have claimed that the CCM will somehow create customary international law which will bind non-parties. This is legally inaccurate-it creates no legal norm or restriction for states that do not agree to be bound by it. The text of the Convention on Cluster Munitions can be found at:
www.stopclustermunitions.org/the-solution/the-treaty/

¶7. (SBU) Military Utility and the Importance of Maintaining
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Interoperability: The United States understands that some states, because of their security situation, may decide that they no longer require the use of most types of cluster munitions. However, cluster munitions remain integral to the military operations of the United States and many of our coalition partners. We believe that the elimination of cluster munitions from our stockpiles would put the lives of our soldiers and those of our coalition partners at risk. Without cluster munitions it becomes more difficult to fulfill our security guarantees to others. We are not aware of any munition that offers the same combination of range, destructive power and responsiveness as cluster munitions. Moreover, there are no easy substitutes, and possible alternatives (carpet bombing, massed artillery barrages, etc.) have pronounced and potentially more adverse humanitarian impacts. We are working to improve our cluster munitions in order to reduce the unintended effects on civilians (see para 9). We were concerned during the Oslo Process meetings, which led to the December 3 signing of the CCM, that this Convention would severely constrain our ability to conduct military operations with future States Parties. Article 21 of the CCM addresses these concerns by allowing States Parties to participate in combined operations in which a non-state party may use cluster munitions, notwithstanding obligations under Article 1 of the Convention. It is our understanding that this would permit a broad range of activities and that personnel from States Parties would only be prohibited from directly requesting the use of or employing cluster munitions. On September 30, the NATO Military Committee issued advice stating that Article 21 provides the necessary flexibility to allow military cooperation among Allies, regardless of whether they are not Parties to the Convention. A number of CCM supporters, however, may embrace a more narrow interpretation of Article 21, largely for political reasons.

¶8. (SBU) United States Policy on Cluster Munitions and Unintended Harm to Civilian: The United States remains concerned about the potential unintended harm to civilians that cluster munitions can cause. On June 19, Secretary Gates signed the new Department of Defense Policy on Cluster Munitions and Unintended Harm to Civilians. The primary feature of this policy is the commitment that by 2018, United States armed forces will employ only those cluster munitions that, after arming, result in no more than 1% unexploded ordnance across the range of intended operational environments. Post-2018, the U.S. will not transfer cluster

munitions that do not meet these criteria and, for any cluster munitions transferred prior to 2018 not meeting this standard, the recipient state must agree not to use them after 2018. In addition, the Department of State and the Agency for International Development will continue efforts to protect civilians from unexploded cluster munitions and explosive remnants of war through extensive survey, clearance, risk education assistance, and victims, assistance programs. The U.S. is the largest single donor to these types of activities, providing over \$1.4 billion since 1993. (This figure includes assistance for clearance of landmines and all varieties of unexploded ordnance). The Department of State programs include both immediate post-conflict response and long-term assistance for severely affected states.

¶9. (SBU) The Convention on Conventional Weapons: The fifth round of negotiations on the issue of cluster munitions within the framework of the Convention on Certain Conventional Weapons (CCW) was held November 3-7 in Geneva. This was the final round of negotiations provided for in the Group of Governmental Experts (GGE),s 2008 mandate and was followed by a meeting of CCW High Contracting Parties (HCP) November 13-14. A number of countries that participated in the Oslo Process blocked progress on the negotiations and succeeded in ensuring that no Protocol will be completed this year. The HCP decided to continue the GGE in 2009 with two weeks of discussion (vice the seven weeks in 2008). The U.S. delegation expressed its disappointment at not concluding a protocol this year, particularly as a number of major producers and users of cluster munitions (such as China and Russia) may have been willing to accept a Protocol text that would have had substantial humanitarian benefits. It should be noted, however, that these major producers and users also raised some issues with the text under discussion. The United States continues to support the CCW negotiations and will participate fully in the 2009 GGE sessions (February 16-20 and April 14-17).

¶10. (U) For more information please contact Katherine Baker (202-663-0104) or Sho Morimoto (202-663-0290) in PM/WRA.
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